IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24-08-2006

Coram:

The Honourable Mr. Justice Elipe DHARMA RAO
and
The Honourable Ms. Justice K. SUGUNA

W.A. No.3110 of 2003

1. Greaves Employees Development Union
rep. by its General Secretary
No.11, Othavadai Street
Navelpur, Ranipet

2. Greaves Mazdoor Sangam
rep. by its General Secretary
No.6 Kanar Kaikaran Street
Thoppu Kanna, Arcot
Vellore District .... Appellants/Respondents 3 & 4

:versus:

1. Ranipet Greaves Employees Union
rep. by its General Secretary
No.22 Basha Street
Arcot 632 503

2. Greaves Labour Union
rep. by its Secretary
No.20 A Velumudaliyar Street
Ranipet 632 401

3. The Commissioner of Labour
Teynampet, Chennai-6

4. Labour Officer-I
Krishna Nagar
Vellore 1 ....Respondents/Petitioners &
Respondents 1 & 2

Appeal under Cl.15 of the Letters Patent against the order dated 5-9-2003 in W.P. No.33200 of 2002 presented under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records form the 2nd Respondent relating to the impugned order dated No.129, No.1926/2001 dated 08.03.2003 and quash the same and direct the

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1st and 2nd respondent to conduct Union Election to elect a representative body of the workers to accord representatives in the greaves Ltd., Factory at Ranipet.

For Appellants :: Mr. G.R. Swaminathan
For Respondents :: Mr. N.G.R. Prasad
for Mr. Rajaram 1 & 2

JUDGMENT

(Delivered by Elipe DHARMA RAO, J.)

Aggrieved by the order dated 5-9-2003 passed by the learned single Judge in W.P. No.33200 of 2002, respondents 3 and 4 in the writ petition, have filed the present writ appeal.

2. The writ petition was directed against the order dated 8-3-2002 passed by the Labour Officer-I. On a request made by the Management by letter dated 4-12-2001 to conduct election for union recognition under the supervision of the Labour Officer, Vellore. The Labour Officer in the above impugned proceedings stated that the Greaves Employees Union and Greaves Mazdoor Sangh had not accepted conducting such election, hence, it was not possible to send letter to the Commissioner of Labour, Chengalpattu seeking permission to conduct such election, hence, it was not possible to send letter to the Commissioner of Labour, Chengalpattu seeking permission to conduct such election.

3. The writ petition was filed contending that the Greaves Limited has a factory at Ranipet, manufacturing diesel engines for Auto Rickshaws and pump sets. It employs about 350 permanent workers. The first petitioner union has on its roll 200 members and the second petitioner union has 100 membership. Originally the factory at Ranipet was under the control and management of Enfield India Limited. There was a settlement dated 9-8-90 under Sec.12(3) of the Industrial Disputes Act between the Management and the several workers' unions facilitating election by secret ballot to elect workers representatives. As per the said 12(3) settlement, election would be held once in two years, under the supervision of the Labour Officer. This representative body alone would get recognition from the management and this body alone has the right to negotiate with the management. Election has been held once in two years from 1990 onwards in accordance with the said settlement and the elected representatives alone had been dealing with the management. It is pertinent here to note here that earlier to this the factory was managed by the Enfield India Limited and elections were held during its management 1994, 1997 and 1999 to elect the workers representatives in accordance with 12(3) settlement dated 9-8-1990. The term of office for the workers representatives elected in the year 1999 came to an end in the year 2001 and thereafter no election has been held. Accordingly, the petitioner

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union sent a letter dated 24-9-2001 to the Labour Commissioner and the Labour Officer requesting them to conduct the union election as per 12(3) settlement dated 9-8-1990. The Management by letter dated 4-12-2001 requested the Labour Officer to conduct election for union recognition under his supervision. The Labour Officer instead of conducting election as per the terms and conditions of the 12(3) settlement dated 9-8-1990 expressed his inability to conduct the elections as the other unions are not inclined to participate in the election. Therefore, filed the writ petition.

4. Learned single Judge, on consideration of facts and circumstances of the case, relying on series of authorities placed before him, allowed the writ petition with a direction that the impugned order is quashed and the respondents 1 and 2 are directed to conduct the union elections to elect a representative body of the workers to accord representatives in the Greaves Limited Factory at Ranipet within a period of eight weeks from the date of receipt of the order.

5. Aggrieved of the above, two unions, respondents 3 and 4 in the writ petition, have filed the writ appeal contending that the communication dated 8-3-2002 issued by the Labour Officer-I, Vellore is perfectly legal and that no exception could be taken to the same. Further contended that the fourth respondent herein who is the conciliation officer derives his jurisdiction from the consent of the parties and that in the absence of the same, he can only send a failure report and let the issue go the adjudicatory machinery under the Act. No binding direction can be issued by the said authority to the contesting parties. Further contended that the earlier settlements entered into under Sec.12(3) of the I.D. Act are no longer in force and that it was not permissible in law to cite those provisions. Also contended that the earlier settlements or agreements have no force in law after the expiry of the period of settlement. It was also contended that the writ petition itself was not maintainable.

6. On the basis of the above stated facts and circumstances of the case, learned counsel for the appellants relied on the judgments of the Supreme Court in WORKMEN OF WESTERN INDIA MATCH CO. LTD. v. WESTERN INDIA MATCH CO. LTD. (AIR 1966 SC 976). The facts therein are that the Western India Match Co. has got a factory with an office attached thereto in Alambazar which is a suburb of Calcutta. It has also got a sales office at Calcutta which is situate in the commercial area. Certain disputes arose between the factory employees and the respondent, pursuant upon the presentation of a charter of demands by them to the respondent on January 25, 1957. These demands were seven in number. The demands included enhancement of the dearness allowance and alteration of the basis of computing it. They also included a demand for the revision of the pay scales. The respondent was unwilling to concede the demands and thereupon the appellant-union approached the Labour Commissioner, West Bengal. At the instance of the Commissioner some conferences were held and certain

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suggestions were made. Thereafter, the Government by its order dated 14-1-1958 referred the dispute relating to the dearness allowance alone to the Industrial Tribunal at Calcutta but not the other disputes. With regard to the other disputes, conciliation proceedings were resumed after the aforesaid reference was made and on 23-5-1958 a settlement was reached between the Union and the respondent on all issues excepting the one relating to grades and scales of pay. In those circumstances, with regard to the contention of the respondent company that the settlement arrived at between the employer and the employees shall be binding for such period as is agreed upon by them and if no such period is agreed upon for a period of six months from the date of the settlement and shall continue to be binding on them after expiry of that period until the expiry of two months from the date on which a notice in writing of his intention to terminate the settlement is given by one of the parties to the other party, it was held that though no formal notice under Sec.19(2) was given that the letter can itself be construed as notice within the meaning of that provision. It may be noted that the representation was made long after the expiry of two months from this date. For these reasons, overruled the contention of the company.

7. Applying the above said judgment to the facts of the present case though a settlement was arrived at between the four unions in the presence of the Labour Officer, none of the parties to the settlement has given any notice to the others with regard to the non-operation of the settlement. Therefore, this judgment is not applicable to the facts and circumstances of the case.

8. Learned counsel also relied on the decision of the Supreme Court in RAJASTHAN STATE ELECTRICITY BOARD AND OTHERS v. LAXMAN LAL AND OTHERS (1991 Supp. [2] SCC 531). In this decision, the subject-matter before the Supreme Court was with regard to the applicability of the first settlement with regard to the appointment of meter-reader wherein one of the parties to the settlement had issued the notice for termination of the first settlement after 31-3-1974. In such circumstances, the Supreme Court observed that the Board had already taken the stand that the first settlement was clarified by the second settlement and as such even if the High Court had quashed the second settlement, it was at least a sufficient notice within the meaning of Section 19(2) of the Act that the Board had terminated the first settlement after March 31, 1974. The regulations deemed to have come into force from April 1, 1974 also clearly provided for pay scale No.2 for Meter Reader/Meter Checker Grade II.

9. Learned counsel for the appellant also relied on the decisions of the Supreme Court in PATIALA CENTRAL COOPERATIVE BANK LTD. v. PATIALA CENTRAL COOPERATIVE BANK EMPLOYEES' UNION AND ANOTHER (1996[11]SCC 202) and NATIONAL TEXTILE CORPORATION (APKKM) LTD. v. SREE YELLAMMA COTTON, WOLLEN AND SILK MILLS STAFF ASSOCIATION AND OTHERS (2001 [2] SCC 448). In the said decisions, the Supreme Court held that a settlement once entered into between the parties shall be operative until the same is terminated

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as provided in Section 19 of the I.D. Act, 1947. The object of such a provision is to ensure that once a settlement is entered into then industrial peace prevails according cordialities between the parties during the period agreed upon. The same position should continue by extension of the settlement by operation of law. The said decisions are not applicable to the facts of the present case, as there was no notice issued by any one of the parties to the settlement, seeking termination of the settlement or for replacing of the clauses of the first settlement as contemplated under Sec.19(2) of the Act.

10. On the other hand, learned counsel for the respondents/writ petitioners submitted that there are four settlements/Memorandum of Understanding reached between the parties, viz. 9-8-1990, 18-5-1995, 8-7-1997 and 6-8-1999 with regard to conduct of union elections and as per the terms and conditions of the settlements/MoUs union elections were to be conducted once in two years and as per Clause 12 of the present Settlement dated 6-8-1999 it was agreed that parties are bound by the terms and conditions of the earlier settlements/MoUs also. Learned counsel relied upon the decisions of the Supreme Court in LIFE INSURANCE CORPORATION OF INDIA v. D.J. BAHADUR AND OTHERS (1981 LLJ 1), wherein in paragraph 32, the Supreme Court observed as follows:

> "The core question that first falls for consideration is as to whether the Settlement of 1974 are still in force. There are three stages or phases with different legal effects in life of an award or settlement. There is a specific period contractually or statutorily fixed as the period of operation. Thereafter, the award or settlement does not become non est but continues to be binding. This is the second chapter of legal efficacy but qualitatively different as we will presently show. Then comes the last phase. If notice of intention to terminate is given under S.19(2) or S.19(6) then the third stage opens where the award or the settlement does survive and is in force between the parties as a contract which has superseded the earlier contract and subsists until a new award or negotiated settlement takes its place. Like Nature, Law abhors a vacuum and even on the notice of termination under S.19(2) or (6) the sequence and consequence cannot be just void but a continuance of the earlier terms, but with liberty to both sides to raise disputes negotiate settlements or seek a reference and award. Until such a new contract or award replaces the previous one, the former settlement or award will regulate the relations between the parties. Such is the understanding of industrial law at least for 30 years as precedents of the High Courts and of this Court bear testimony. To hold to the contrary is to invite industrial chaos by an interpretation of the I.D. Act whose primary purpose is to obviate such a situation and to provide for industrial peace. To distil from the provisions of S.19 a conclusion diametrically opposite of the objective,

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intendment and effect of the section is an interpretative stultification of the statutory ethos and purpose. Industrial law frowns upon a lawless void and under general law the contract of service created by an award or settlement lives so long as a new lawful contract is brought into being. To argue otherwise is to frustrate the rule of law. If law is a means to an end – order in society – can it commit functional harakiri by leaving a conflict situation to lawless void?"

Therefore, as stated above, except submitting a letter to the Labour Commissioner that they are not interested to go on with the election as per the settlement dated 6-8-1999, the appellants have not given any notice to any of the parties to the settlement dated 6-8-1999 for the cancellation of the settlement or for replacement of the clauses of the said settlement under Sec.19(2) of the Act. Therefore, we are not able to agree with the contentions raised by learned counsel for the appellants. We, on the other hand, agree with the contentions raised by the learned counsel for the respondents.

11. With regard to the objection raised with regard to the maintainability of the writ petition is concerned, we are of the view that when a settlement was entered into between the parties, it has a statutory force under Sec.12 of the I.D. Act and it is for the Labour Officer to implement the settlement till it is cancelled or varied by any subsequent settlement between the parties. On earlier occasions, as per the settlement between the appellants and the respondent unions, directions were given to conduct the elections and, therefore, the appellants cannot now turn around and contend with regard to maintainability of the writ petitions. We are, therefore, of the view that the writ petition was maintainable.

12. As per Clause 5 of the settlement dated 18-7-1997 entered into between the parties, the elections were held and the appellants union and their associates have won the election and continued in office and the Management have also recognised them to represent the employees' disputes and grievances. As per clause 5 of the Settlement 1997 immediately after the expiry of two years, elections have to be conducted. When the writ petitioner gave a notice dated 16-7-1999 for the conduct of the election, which was supported by the Management, but the appellants in stead of going for elections as per the terms and conditions of the election, wrote letters to the Labour Officer and the Labour Commissioner has passed the impugned order. It is patently clear that the appellants do not want to forego their recognition by virtue of the election conducted in the year 1999 and they want to continue the same status and that is why instead of giving a notice as contemplated under Section 19 of the Act, they disown the terms and conditions of the settlement and approached the Labour Commissioner which action is capricious, mala fide and against the interest of justice and trade union movement. Therefore, we have no hesitation to reach a conclusion that the letter addressed by

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the appellants to the Labour Commissioner is only to avoid the conduct of the election as per the terms and conditions of the settlement of the year 1993 under which the election has to be held once in two years. Further, the settlement have the force till it is replaced by another settlement. In the case on hand, the appellants instead of proceeding as per law, invents shortcut methods to continue in office contrary to the law.

13. Accordingly, we see no merit in the writ appeal. The order passed by the learned single Judge is confirmed. The fourth respondent is directed to conduct the election as per the terms and conditions of the settlement dated 9-8-1990 within a period of four weeks from the date of receipt of copy of this order.

14. The writ appeal is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Jai

To:

1. The Commissioner of Labour
   Teynampet, Chennai-6

2. Labour Officer-I
   Krishna Nagar, Vellore 1

2 cc To Mr.R.Rajaram, Advocate, SR.38329.
1 cc To Mr.G.R.Swaminathan, Advocate, SR.38528.

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